

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015070319

**DECISION**

Student filed a due process hearing request (complaint) with the Office of Administrative Hearings, State of California, on June 30, 2015, naming Fresno Unified School District. On July 28, 2015, Student filed an amended due process hearing request.

Administrative Law Judge B. Andrea Miles heard this matter in Fresno, California, on September 22, 23, 24, 29, and 30, 2015 and October 6, 7, 8, 13, and 14, 2015.

Student's mother represented Student. Student's father attended the hearing when he testified.

Diandra Netto, Attorney at Law, represented Fresno. She was assisted by Sydney Smith, Attorney at Law. Debi Clark-Fleming, Special Education Program Manager, attended throughout the hearing as Fresno's representative.

A continuance was granted for the parties to file written closing arguments and the record remained open until November 9, 2015.<sup>1</sup> Upon receipt of the parties' closing arguments the record was closed and the matter was submitted for decision.

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<sup>1</sup> The parties were ordered to file their closing briefs by noon on November 9, 2015. Student filed his closing brief in a timely manner, however, Fresno filed its closing brief at 1:48 PM on November 9, 2015. Ms. Netto provided a sworn declaration indicating that the delay in filing was due to power outage at her law office. Fresno established good cause to extend the filing deadline until 1:48 PM, when Fresno's closing brief was received.

## ISSUES<sup>2</sup>

1. Did Fresno commit the following procedural violations which resulted in denying Student a free appropriate public education:

- a. failing to provide accurate levels of academic achievement and functional performance at the individualized education program team meetings held between June 30, 2013, and June 30, 2015;
- b. failing to develop appropriate measurable goals at the IEP team meetings held between June 30, 2013, and June 30, 2015;
- c. offering Student a special day class in June 2015 without providing a course description of the new class;
- d. failing to provide parents with required progress reports from June 30, 2013, through June 30, 2015, regarding Student's progress meeting his annual IEP goals;
- e. failing to provide prior written notice to parents during the 2014-2015 school year, when Fresno refused to timely hold an IEP team meeting;
- f. failing to hold an IEP team meeting from January 2015 to May 2015 at the parents' request; and
- g. failing to have all legally required people at the IEP team meeting on May 1, 2015?

2. Did Fresno deny Student a FAPE by failing to provide Student with appropriate specialized academic instruction services from June 30, 2013 through June 30, 2015 by:

- a. failing to provide Student with an additional hour daily of one-to-one direct instruction and specialized academic instruction services; and
- b. failing to provide Student with intervention and services at his instructional reading level?

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<sup>2</sup> The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

3. Did Fresno fail to provide Student with appropriate speech and language services by:
  - a. failing to provide any speech and language services between June 30, 2013, and December 31, 2013; and
  - b. failing to increase Student's services during the time period of June 30, 2013, through June 30, 2015?
4. From June 30, 2013, through June 30, 2015, did Fresno deny Student a FAPE by:
  - a. removing Student's Learning Strategies class and offering placement as an aide in a functional skills class; and
  - b. failing to offer or provide any extended school year services?
5. Did Fresno fail to implement Student's IEP goals and services from June 30, 2013, through June 30, 2015?

### SUMMARY OF DECISION

This decision holds that Fresno did not deny Student a FAPE during the 2013-2014 and 2014-2015 school years. Despite several procedural violations being found, the violations did not result in a denial of FAPE to Student. Student failed to prove that he was denied a FAPE during the 2013-2014 and 2014-2015 school years due to a failure to implement the goals and services from Student's operative IEPs. Additionally, this decision holds that Student did not meet his burden of proving that Fresno denied Student a FAPE by failing to offer Student an additional hour of one-to-one tutoring and specialized academic instruction. Student is therefore not entitled to any of his requested remedies.

### FACTUAL FINDINGS

#### *Jurisdiction*

1. Student is a 16-year-old male who has lived with his mother, father, older brother, and younger sister within Fresno's boundaries at all times relevant to this decision. Student's primary language is English, yet he has exposure to both Spanish and English at home. Student is eligible for special education under the primary category of specific learning disability and the secondary category of speech and language disorder.

2. Student attended Ewing Elementary School in Fresno from kindergarten through third grade. Student was found eligible for special education on March 3, 2007, when Student was in the second grade. Before Student's fourth grade school year, Student's family moved to live within the boundaries of Clovis Unified School District. Student attended fourth and most of fifth grade in the Clovis Unified School District. Towards the end of Student's fifth grade year, Student and his family moved back into the Fresno boundaries and Student finished his fifth grade year at Lane Elementary School in Fresno. At no point during his education has Student been retained.

*Prior to Re-entering Fresno Unified School District*

3. Between November 2009 and March 2010, while attending school in Clovis, Student participated in a 10-week social skills training program through Clovis. The training consisted of small group counseling which was designed to address social skills, friendship making skills, prosocial communication skills, identifying and expressing emotions, and confidence building. Student actively participated in the training and his social skills improved.

4. In April 2010, Clovis's school psychologist and a resource specialist program teacher conducted a psychoeducational assessment<sup>3</sup> of Student. The psychoeducational assessment also incorporated information from a speech and language assessment which was conducted by one of Clovis's speech and language pathologists in March 2010.

5. The psychoeducational assessment determined that Student's general cognitive functioning fell within the average range and his nonverbal intelligence fell within the above average range. The assessors determined that Student demonstrated significant deficits in auditory and expressive language processing and that his academic performance in oral expression, written language, reading comprehensions, and math reasoning was not commensurate with his nonverbal cognitive ability. The assessment found Student eligible for special education under the category of specific learning disorder.

6. The speech and language assessment indicated that Student continued to present with overall language skills in the below average range in understanding and using spoken language. The assessment's standardized and observational measures showed that Student's speech and language deficits were not significantly different from prior school district and private speech and language assessments. Ultimately, the assessment found that Student continued to qualify for special education speech and language services.

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<sup>3</sup> The terms "assessment" and "evaluation" are synonyms. Federal statutes and regulations generally use the term "evaluation". California statutes and regulations generally use the term "assessment". This decision will use the term "assessment" since that is the common usage in California, except when referring to a federal statute.

7. In 2009, Student was diagnosed with mild ventriculomegaly by Dr. Raymund Davis, a pediatric neurologist at Children's Hospital of Central California. Ventriculomegaly is a brain condition that occurs when the lateral ventricles become dilated. Testing showed that all of the ventricles in Student's brain were a bit enlarged, but mostly the left lateral ventricle and the third ventricle. Subsequent testing showed that over a six-month time period, Student's condition remained constant with no significant changes noted. In most people, the left side of the brain dominates language processing, including auditory processing and verbal expression. As the left lateral ventricle in Student's brain was enlarged, it is possible that Student's language deficits were due at least in part to his medical condition. Neither party presented any testimony or supporting documentation from a medical professional about Student's diagnosis or its effect on Student. It is unknown whether Student's condition has changed over time as no follow up testing has been conducted since 2010.

#### *2011-2012 School Year*

8. During the 2011-2012 school year, Student attended seventh grade at Terronez Middle School. Student's cumulative grade point average for the school year was 2.96.<sup>4</sup>

#### **MARCH 5, 2012 IEP**

9. On March 5, 2012, an IEP team meeting was held. The March 5, 2012 IEP offered Student 60 minutes of push-in or pull-out speech and language services a week in a small group or individualized setting. The written IEP specified that the number of speech and language sessions and the length of the speech and language sessions were to be determined by the speech and language pathologist who provided the services. The designated service time was to include time for assessments, report writing, documentation, and collaboration with Parents and Student's teachers. However, Student was not provided any speech and language services during the 2011-2012 school year, because the former speech and language pathologist had left employment with Fresno and Fresno failed to hire a replacement.

10. The IEP also offered Student 55 minutes of resource specialist program support five times a week for English Language Arts to be provided in a separate classroom. The IEP noted that Student experienced difficulty with reading comprehension, which was consistent with the findings of prior assessments. The IEP team discussed offering a special education reading intervention program to address Student's deficits, but Parents declined that offer because Mother felt that during sixth grade Student did not make progress when Student participated in a reading intervention program with a similar curriculum. Ultimately, the reading program was not included as a service or placement in the March 5, 2012 IEP. Student was not offered special education services during the extended school year.

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<sup>4</sup> Fresno's grading system was based on 4.0 being the highest achievable grade. The grade 4.0 would be considered the equivalent of an "A" in Fresno's grading system.

11. The IEP offered Student the accommodations of: reduced and shortened assignments as needed and as appropriate; highlighted text books as needed; use of a visual place holder as needed and as appropriate; access to a computer on campus; adult support as needed and as appropriate; modified assignments as needed and as appropriate; preferential seating as needed and as appropriate; short breaks between assignments as needed; cues, prompts, and reminders as needed; use of an assignment notebook planner; extended time to complete assignments; checking for understanding as needed and as appropriate; presentation of one task or direction at a time as needed and as appropriate; instructions repeated and rephrased as needed and as appropriate; flexible seating; and flexible scheduling.<sup>5</sup>

12. The IEP offered Student seven goals in the areas of: language, social-emotional, math, auditory processing, reading fluency, reading comprehension, and written language. Each of the goals specified short-term objectives which were to be monitored. Unlike the rest of the goals, the language goal specified that that the goal was to be met by January 2012. The social-emotional goal only listed two short term objectives, whereas the other six goals listed three short term objectives.

13. Mother agreed to allow Fresno to implement the March 5, 2012 IEP although she did not believe that the offer constituted FAPE. Mother felt the goals and services were not sufficient to address Student's needs. Mother's opinion was memorialized in the IEP document.

#### *2012-2013 School Year*

14. During the 2013-2014 school year, Student attended Terronez Middle School, as an eighth grader. Student's cumulative grade point average for the school year was 3.25 or a "B."

#### *AUGUST 30, 2012 IEP*

15. On August 30, 2012, Fresno convened an IEP team meeting after Parents raised concerns over Student's class schedule and the services Student was receiving. Parents requested to change Student's schedule so that he could take a Folklorico class.<sup>6</sup> At that time Student was receiving one class period of resource specialist program support in a special education English Language Arts class. Because of the conflicting schedules, Student would not be able to attend the Folklorico class if Student remained in the special education English Language Arts class.

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<sup>5</sup> These offered accommodations remained the same offered accommodations in all of the subsequent IEPs.

<sup>6</sup> The Folklorico class was a dance class that focused on traditional Latin American dancing.

16. The IEP team agreed to change Student's placement from the special education English Language Arts class to a general education English Language Arts with 55 minutes of resource specialist program support. Otherwise, the August 30, 2012 IEP offered Student the same services, accommodations, and goals as the March 5, 2012 IEP. Parents accepted the August 20, 2012 IEP offer.

17. The IEP did not offer Student extended school year services for the summer of 2013. The IEP team intended discussing that issue at Student's annual IEP meeting in the spring of 2013.

#### JUNE 12, 2013 IEP

18. On May 8, 2013, May 31, 2013, and June 12, 2013, an IEP meeting was held to discuss Student's eligibility for special education and transition into high school and to review the recently conducted assessments. Although the IEP meeting was held over three separate dates, Fresno's final IEP offer was memorialized in the June 12, 2013 written IEP, which superseded any prior drafts.

19. Mother informed the IEP team that she had not received progress reports during the 2012-2013 school year. During one of the meetings, it was confirmed that reports of Student's progress on his IEP goals had not been sent home at any point during the school year, despite the fact that both the May 2012 and August 2012 IEPs specified that progress reports were supposed to be provided on a quarterly basis. However, general education progress reports and report cards were mailed home on a quarterly basis.

20. The IEP team discussed Student's progress on his goals and his present levels of performance, including Student's grades. Student's teachers indicated that Student appeared comfortable asking for assistance or clarification in the event that he was having difficulty understanding an assignment. During the third quarter of the school year, Student received the following grades: an "A" in Pre-Algebra; a "B+" in Computers; an "A+" in Physical Education; a "B" in Science, a "B-" in History; and a "C" in English Language Arts. Since the school year had not yet concluded at the time of the meetings, Student's fourth quarter grades had not yet been computed.

21. As noted by Student's English Language Arts teacher, Student struggled with symbolism, the multiple meaning of words or phrases, and making inferences. Additionally, Student had difficulty keeping up with the assigned work as the school year progressed. Conversely, in mathematics class Student was able to work independently and was receiving an "A" in mathematics at the time of the IEP meeting.

22. Student did not meet all of the goals set out in the August 2012 IEP, although Student made progress on his goals. Based on a review of the recent testing and the observations of Student's teachers, the IEP team determined that Student had needs in the areas of: reading comprehension, written expression, oral expression, mathematics reasoning, listening comprehension, and auditory processing. As such, the IEP team

constructed goals to address Student's identified needs. The goals were based on the teacher's observations of Student's needs, testing data, and Student's standardized test scores.

23. The June 12, 2013 IEP offered Student 500 minutes of resource specialist program support weekly in a general education class and resource specialist program support in a Learning Strategies class for Student's freshman year of high school. The intention was that Student would be attending Roosevelt High School for his freshman year.

24. Jeannette Vestal was Student's case manager during the 2012-2013 school year. Student attended Ms. Vestal's seventh grade, special education English Language Arts class and Ms. Vestal's co-taught eighth grade, general education English Language Arts class. Ms. Vestal provided Student with resource specialist program support during the co-taught English Language Arts class. Ms. Vestal believed that Student would struggle, but succeed, in the general education English Language Arts class, which was being offered to Student for ninth grade. She also believed that with resource specialist program supports the placement would constitute the most appropriate and least restrictive environment for Student. Ms. Vestal's opinion on this issue was compelling as Ms. Vestal had previously had the opportunity to work with Student in both a special education and general education environment. After working with Student for several years, Ms. Vestal had a strong basis of knowledge on which to base her opinion.

25. Roosevelt's resource specialist program teacher, Heather Rhodes, participated in the IEP team meeting. She explained to Mother that, at Roosevelt, Student would be placed in an English Language Arts class which was co-taught by a general education teacher and herself. During the class, small groups of students would be pulled out for small group instruction when more intensive intervention was needed.

26. Ms. Rhodes explained that Student was being offered placement in the Learning Strategies class. The Learning Strategies class was designed to provide special education students support with organization, classwork, and homework assignments. The information provided by Ms. Rhodes during the IEP team meeting was memorialized in the notes of the written IEP.

27. It was also shared with Mother that Roosevelt provided afterschool tutoring for all of Roosevelt's students. Ms. Rhodes explained that she and Student's general education English Language Arts teacher would be available during Student's lunch hour and on Mondays, Wednesday, and Fridays after school to provide Student with extra assistance.

28. At the IEP team meeting, Mother expressed her concerns that Student had not met all of his IEP goals during his sixth, seventh, and eighth grade years. As such, Mother requested that Student be provided compensatory education services in the form of one-to-one tutoring by a certified special education teacher beginning during the 2013 summer recess. Mother's request was denied later in a Prior Written Notice. Mother rejected Fresno's June 12, 2013 IEP offer.



*FRESNO'S MULTIDISCIPLINARY PSYCHOEDUCATIONAL ASSESSMENT*

29. During the meeting, Tammy Silva, a school psychologist with Fresno, presented the results of the multidisciplinary psychoeducational assessment which was conducted during February 2013 and March 2013. School districts have an obligation to reassess students for special education eligibility at least once every three years, unless the parent and district agree that a reassessment is not necessary. This assessment is commonly termed as a "triennial assessment." The purpose of a triennial assessment is to examine whether the student continues to have a disability, the student's present level of performance and educational needs, whether the student continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

30. The triennial assessment was conducted by Tammy Silva, Jeannette Vestal, and Laurie Staggs, school nurse. The results of the three assessments were compiled into one document. The results from the assessment were included in the IEP as part of establishing Student's present levels of performance.

31. As part of the assessment, Student's performance on both state assessments and district assessments was reviewed. During the first three quarters of the 2012-2013 school year, Student scored either "below basic" or "far below basic" on Fresno's assessments for English Language Arts proficiency and either "basic" or "below basic" for mathematics proficiency. In 2012, Student scored "far below basic" in English Language Arts and "below basic" in mathematics on the California Standards Test. Prior years of testing yielded similar results in the area of English Language Arts. However, Student had tested at the "basic" or "proficient" level in the area of mathematics during most of the prior years of testing.

32. Ms. Silva administered the Wechsler Nonverbal Scale of Ability test to Student. This test is a standardized, norm-referenced test which measures general cognitive ability, while minimizing the impact of language skills on the test results. Due to Student's language deficits, it was considered to be the best indicator of Student's cognitive ability. Student's performance on the test placed him in the high average range for cognitive ability, which was consistent with the results from prior testing.

33. As part of the academic portion of the testing, Ms. Vestal administered the Woodcock Johnson Test of Achievement, Third Edition to Student. The Woodcock Johnson is a standardized test of academic skills and achievement, in the areas of reading, mathematics, written language, and oral language. The testing results were consistent with prior testing in that Student's basic reading skills fell into the "average" range, while Student's reading comprehension skills fell in the "low" range. These results again showed that reading comprehension was an area of weakness for Student. The Woodcock Johnson's results also showed that Student had weaknesses in the areas of written expression, oral expression, and listening comprehension. Although Student scored in the low average range

for math reasoning skills, Student scored in the average range for math calculation skills. These results indicate that Student had difficulty analyzing and solving math problems despite having stronger math computation skills.

34. Ms. Silva administered the Beery-Buktenica Developmental Test of Visual Motor Integration, Sixth Edition, to Student. The Beery-Buktenica is a standardized assessment that provides an estimate of the developmental level of a person's visual-fine motor skills. Student scored in the average range on the test, indicating that Student's visual-motor integration skills were at the expected level for his age.

35. Ms. Silva administered the Test of Auditory-Perceptual Skills which assesses the auditory scores that are necessary for the development, use, and understanding of language commonly utilized in academic and everyday activities. The test indicated that auditory cohesion was an area of weakness for Student. Auditory cohesion is a higher-order linguistic skill that requires the student to not only understand exactly what is being said, but also to be able to use inferences, deductions, and abstraction to understand the meaning of a passage. This test result was consistent with the Student's English Language Arts teacher's observations that she shared at the IEP team meeting.

36. As part of the assessment, the school nurse interviewed Father regarding Student's health. Father did not report that Student had any medical conditions. However, Mother had previously informed Fresno of Student's diagnosis of mild ventriculomegaly. The nurse tested Student's vision and hearing. Student passed his hearing and vision tests, but the nurse noted that Student's vision tested as 20/30 in both eyes.

37. The assessment results showed that Student had a severe discrepancy between his intellectual ability and his achievement in the areas of: oral expression, listening comprehension, written expression, reading comprehension, and mathematics reasoning. The assessors also found that Student had an auditory processing disorder. Ultimately the assessors determined that Student met the eligibility criteria for special education under the category of specific learning disability.

#### *SPEECH AND LANGUAGE SERVICES*

38. Although both the March 3, 2012 and August 30, 2012 IEP's offered Student 60 minutes weekly of speech and language services, Student was not provided speech and language services during the 2012-2013 school year, because Fresno did not have a speech and language therapist available to provide the services. Parents were informed at the IEP team meeting that once Fresno hired a speech and language pathologist they would be

notified and Student would be offered compensatory services.<sup>7</sup> Mother indicated that she was requesting one hour a day of compensatory speech and language services during the summer recess.<sup>8</sup>

39. Additionally, a speech and language assessment was not completed due to the unavailability of a speech and language pathologist to conduct the assessment. At the May 31, 2013 IEP team meeting, Mother signed the speech and language assessment plan, giving Fresno permission to assess Student. The speech and language assessment was completed in early September 2013.

40. The IEP team was unable to determine Student's current needs in the area of speech and language, so it was unable to create IEP goals and determine what services were necessary to meet Student's speech and language needs. As such, the IEP team agreed to include the speech and language goals and services from Student's August 2012 IEP in the June 12, 2013 IEP offer. At the May 31, 2013 IEP team meeting, Mother accepted Fresno's offer regarding speech and language services only and agreed to allow Fresno to implement the goals and services.

#### *2013-2014 School Year*

41. At the beginning of the 2013-2014 school year, Student transitioned into high school as a freshman at Roosevelt High School. Fresno's 2013-2014 school year began on August 19, 2013 and ended on June 12, 2014.

#### **SEPTEMBER 26, 2013 IEP**

42. On September 26, 2013 an IEP team meeting was held to ensure that Student had been placed in the proper classes and to review the speech and language triennial assessment that had been conducted since Student's last IEP team meeting. As indicated in Student's June 10, 2013 IEP, the IEP team needed to review Student's present levels of performance, goals, and services in the area of speech and language because the IEP team at June 10, 2013 IEP team meeting did not have access to current assessment data at that time.

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<sup>7</sup> The compensatory speech and language services would be separate and apart from the speech and language services, which were included as part of the IEP offer.

<sup>8</sup> Fresno rejected Mother's request in a letter dated June 24, 2013. The issue of whether Student was entitled to compensatory speech and language services based on Fresno's failures to provide speech and language services to Student during the 2011-2012 and 2012-2013 school years will not be decided as it is not at issue in this case.

### *PRESENT LEVELS OF PERFORMANCE*

43. Fresno utilized a computerized IEP system which helped IEP teams to create written IEPs.<sup>9</sup> This system allowed information regarding the student's present levels of performance to be included as part of the IEP in the "Present Levels of Academic Achievement and Functional Performance" section. However, additional information regarding Student's present levels of performance was located in other sections of the written IEP, such as the "Annual Goals and Objectives" section and the "Structured Meeting Notes" section.

44. The IEP provided Student's present levels of performance in the areas of: academic and functional skills; gross/fine motor development; social-emotional and behavior; vocational adaptive/daily living skills; and health. Student contends that the IEP did not provide accurate present levels of performance for Student. However, Student's contentions regarding the scope of the alleged inaccuracy are vague and confusing.

45. The IEP repeated many of Student's present levels of performance which were identified in the June 12, 2013 IEP. The duplication was understandable considering that Student had been at Roosevelt High School for just over a month and the last psychoeducational testing had been conducted in spring of 2013. However, additional information and updated information regarding Student's present levels of performance was included in the IEP.

46. The written IEP accurately provided Student's scores from his last state standardized test score as well as Student's scores from the Woodcock Johnson, which had been administered to Student in the spring of 2013. The IEP noted that on standardized testing Student exhibited weaknesses in both oral expression and listening comprehension and that he demonstrated difficulty regarding semantic and pragmatic language. These findings were supported by the testimony of Fresno's witnesses.

47. Student contends that the present levels of performance regarding Student's vision were inaccurate. The IEP indicated that Student "passed vision and hearing without difficulty" during his February 22, 2013 health screening. The IEP also reflected that Student received a vision test score of 20/30, which was considered passing for the vision test. Mother did not present any evidence that Student's February 22, 2013 vision test score was inaccurate or that a score of 20/30 was not considered as passing the vision test. Mother took no other issue with the present levels of performance regarding Student's health.

48. The IEP also contained observational information about Student's present levels of performance from Student's teachers. At the IEP meeting, Student's general education and special education teachers provided observation information about Student's present levels of performance and the effect of Student's disability on his performance in

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<sup>9</sup> Fresno also utilized the same computerized IEP system for Student's June 10, 2014 IEP and May 29, 2015 IEP.

general education classes. Since the beginning of the year, Student had been placed in a co-taught, general education English Language Arts class. Rebekah Esau, a general education English teacher, and Ms. Rhodes, a special education teacher, taught the class. The class was designed for students who had difficulty with English Language Arts. While the teaching primarily was performed by Ms. Esau, Ms. Rhodes provided support to Student and the students who needed additional assistance.

49. Ms. Esau provided input regarding Student's current performance in class. At the time of the meeting, Student was receiving a "D" in general education English Language Arts, because he had not turned in some of the required assignments. Student's IEP allowed Student additional time to complete assignments, so Student was going to be allowed to submit the missing assignments. Ms. Esau felt that even though Student struggled with the class's curriculum he was able to access it and was receiving an educational benefit.

50. Due to the recent completion of a speech and language assessment, Student's present levels of performance regarding speech and language were updated. In early September 2013, Nicole Cadenasso and Leslie Frederick, speech and language pathologists with Fresno, conducted a speech and language assessment of Student. Ms. Cadenasso presented the assessment's results at the IEP team meeting. The results of the assessment found that Student exhibited a language disorder, specifically in the areas of semantic and pragmatics language. Based on their findings, the assessors recommended that Student continue to receive speech and language services in the areas of expressive and receptive language skills.

51. The test results from the speech and language assessment were included in the written IEP. Additionally, the present levels of performance indicated that Student had weakness in the areas of oral expression and listening comprehension. The assessment's informal language sampling revealed that Student had difficulties with topic maintenance and providing levels of information for non-preferred tasks, topics, and texts. However, Student was able to communicate his wants and needs adequately at school. Student did not present any evidence that the speech and language results were inaccurate or that the present levels of performance were inaccurate.

52. The present levels of performance on Student's IEP and the evidence in this case established that Student was well-behaved at school. His teachers did not experience any behavioral issues with Student and enjoyed having him in class. Student's teachers observed him initiating friendly conversations in the classroom before class with peers and adults. Mother believed that Student could not have been behaving this way because she did not observe the same behavior at home. However, Mother's belief was based primarily on her observations of Student at home and not of Student in school. Therefore, Student's contention that his present level of performance in the social-emotional and behavioral areas was inaccurate was not persuasive.

## *GOALS*

53. The IEP team discussed Student's needs and reviewed proposed goals in the areas of need. The IEP offered Student eight goals in the areas of reading comprehension, written expression, oral expression, mathematics reasoning, listening comprehension, auditory processing, and social-emotional. The IEP offered Student the same seven goals that were offered in the June 12, 2013 IEP, however, one additional speech and language goal was added. Based on her observations of Student, Ms. Cadenasso proposed a new goal in the area of expressive language and pragmatics.

54. The proposed expressive language and pragmatics goal was developed because Student had a tendency to respond to questions related to a non-preferred topic or text in a brief manner. The goal was for Student to provide at least four relevant points of information when explaining events or text during a conversation about an academic topic, with 80 percent accuracy in four out of five trials. The goal was to be measured through charting and observation.

55. Each of the IEP's eight goals was tied to the Common Core State Standards to enable Student to progress within the general education curriculum. California adopted the common core curriculum for the 2014-2015 school year. In order to be in alignment with California's standards, Fresno transitioned to the Common Core curriculum at the beginning of the 2014-2015 school year.<sup>10</sup>

56. Student contends that the IEP's two reading comprehension goals were not appropriate. He believes the goals were inappropriate because they were tied to the Common Core Standards and not Student's instructional reading level. Student had a significant deficit in his reading comprehension skills, as identified through assessments and standardized testing. His needs in the area of reading comprehension were established in the written IEP. One of the reading comprehension goals focused on improving Student's ability to determine the meaning of words and phrases by using the context of the surrounding texts. The second reading comprehension goal focused on Student learning to analyze the structure of texts by understanding how the parts of a text relate to each other and to the text as a whole.

57. As written, the two reading comprehension goals directly related to Student's needs in that area of reading comprehension and they were not inconsistent with Student's instructional reading level. Each of the two goals included short-term objectives that would allow the person supporting the goal to be able to measure Student's progress in meeting the annual goal. The written goals provided a manner in which to determine whether the annual goal had been met.

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<sup>10</sup> In preparation for that transition, the goals set forth in the June 12, 2013 IEP had been written in accordance with Common Core State Standards.

58. The remaining goals all addressed Student's needs which were identified in the IEP. The goals all provided methods of measuring Student's success in meeting the established goals. Each of the goals also contained short-term objectives to allow the person supporting the goal to measure Student's progress in meeting the goal.

59. Since the beginning of the school year, Ms. Cadenesso had implemented the speech and language goals and services from the June 12, 2013 IEP since Parents had agreed to that portion of the June 12, 2013 IEP. At the meeting, Ms. Cadenesso reported on Student's progress with on those goals.

#### *OFFER OF PLACEMENT AND SERVICES*

60. The IEP offered Student 60 minutes of speech and language services to be provided either in a small group setting or individually within the classroom or in a "non-distracting environment." The service minutes were to include time spent preparing therapy materials, assessments, observations, writing reports, and collaborating with Student's teachers, case manager, and parents. The IEP offered Student 750 minutes weekly of specialized academic instruction to be provided in a general education classroom in a group setting. The IEP did not specify whether the 750 minutes were to be designated for any particular area of study.

61. The IEP specified that 16 percent of Student's time would be spent outside of general education and that 84 percent of Student's time would be spent in general education, extracurricular activities, and non-academic activities.

62. At the beginning of the school year, Student had been placed in a general education mathematics intervention class. Since Student tested at a nearly proficient level on the California Standards Test, Mother wanted to have Student transferred out of the mathematics intervention class and placed in the elective class Spanish I for Native Speakers. Since the class was designed for students who already spoke some Spanish, the class focused on academic reading and writing in Spanish. At the IEP team meeting, Mother reviewed the textbooks for Spanish I, Spanish II, and Spanish I for Native Speakers. After reviewing the textbooks Mother changed her mind and agreed with the rest of the IEP team that Spanish II would be a better class for Student. Mother was very concerned that Student be provided the same opportunity to participate in electives as the rest of the students at Roosevelt.

63. At the IEP team meeting, the IEP team, including Mother, agreed that Student should be transferred out of the general education language intervention class<sup>11</sup> he was attending during fourth period and transferred into Spanish II. The two classes did not cover the same type of curriculum, but the scheduling change occurred because Mother wanted Student placed in Spanish II and it was only available during fourth period. The IEP team

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<sup>11</sup> No testimony was provided about the language intervention class's curriculum.

also agreed to transfer Student out of the elective, Stagecraft, and into the Learning Strategies which had been discussed at the June 12, 2013 IEP team meeting. Even though Fresno's witnesses indicated that the Learning Strategies class was an elective class at Roosevelt High, the evidence showed that Learning Strategies was a special education class, as it was only available to special education students and was listed and offered as special education placement in Student's IEP.

64. Although Parents declined to sign the IEP, Parents agreed to partial implementation of the IEP by allowing Fresno to place Student in the special education class, Learning Strategies, and to provide Student with resource specialist program support during that class.

65. Mother requested that another IEP team meeting be scheduled as soon as possible so that Fresno's Director of Special Education could attend. Mother wanted to meet with the Director of Special Education because she wanted to discuss her position that Student should be provided one-to-one tutoring as a result of Student failing to meet all of his IEP goals during prior school years.<sup>12</sup>

66. Student contends that in order for him to receive a FAPE, Fresno needed to provide Student with an additional hour of specialized academic instruction and one-to-one instruction as part of his IEP. Student did not present any evidence that an additional hour of academic instruction and one-to-one instruction was necessary for Student to receive an educational benefit.

67. Student contends that Fresno should have provided him with reading intervention and services at his instructional reading level. The parties and witnesses did not agree on the definition of instructional reading level for Student. For purposes of this decision, a student's instructional reading level is determined by the level of text that a student can read with 75 percent accurate comprehension. When a student is given materials which are higher than his instructional reading level, assistance from teachers or a parent is needed for that student to be able to read and comprehend at the 75 percent level. Although there was a variety of testimony as to what constitutes an instructional reading level for Student, the evidence established that the definition above, from the Degrees of Reading Power, which is a standardized test that measures a student's ability to read and understand complex text, is the appropriate standard for Student.

68. During the hearing, Student did not present evidence that he needed a reading intervention program for this school year. Instead, Student's focus was on establishing that he needed a reading intervention program during the 2014-2015 school year. Mother provided a great deal of testimony and elicited a great deal of testimony regarding Student's instructional reading level, as defined by the Degrees of Reading Power test, during the

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<sup>12</sup> The IEP meeting was not held because Fresno sent Parents a Prior Written Notice Denying Parent's request for one-to-one tutoring.



2014-2015 school year. Based on the evidence presented at the hearing, it can be ascertained that Student's instructional reading level was somewhere between the third and fourth grade level during the 2013-2014 school year.<sup>13</sup> Student's low instructional reading level was related to Student's language disorder and his auditory processing disorder.

69. The texts being used in Student's English Language Arts class were those that were part of the Common Core curriculum. Mother felt that the texts were above Student's instructional reading level, and were preventing Student from being able to access the curriculum. The resource specialist program support, which Student received as part of his IEP, provided Student with the assistance that he needed to be able to access the curriculum. Student did not establish that he required intervention and services at his instructional reading level in order to be able to receive an educational benefit, as the evidence showed that he received educational benefit without these requested interventions.

#### JUNE 10, 2014 IEP

70. On June 10, 2014, an IEP team meeting was convened to determine Student's eligibility for special education, to discuss his transition into his sophomore year of high school, and to discuss his individual transition plan.<sup>14</sup>

#### *PRESENT LEVELS OF PERFORMANCE*

71. The IEP team reviewed Student's present levels of performance and Student's progress on his goals. As with Student's September 26, 2013 IEP, the information regarding Student's present levels of performance was located not only in the "Present Levels of Academic Achievement and Functional Performance" section of the written IEP, but also in other sections of the written IEP.

72. The IEP also provided the results of the most recent psychoeducational assessment which Fresno conducted in February and March of 2013. The IEP contained the results of the speech and language assessment that Fresno conducted in the fall of 2013.

73. Student's general education and special education teachers provided observation information about Student's present levels of performance and the effect of Student's disability on his performance in general education classes. Student's general education science teacher, Marilyn Dach, indicated that Student was receiving a "B" in the

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<sup>13</sup> Student did not take the Degrees of Reading Power test until the 2014-2015 school year.

<sup>14</sup> An individual transition plan is the section of the IEP that outlines transition goals and services for the student. The purpose of an individual transition plan is to help students successfully transition to adulthood. The appropriateness of Student's individual transition plan will not be addressed in this decision, as Student has not put it at issue in his complaint and did not present any evidence on the topic.

class. She indicated that Student needed extra time to complete assignments. Ms. Dach expressed her concern that Student struggled socially and that he would not ask other students for assistance.

74. Although Student had all the basic math skills that he needed to be successful, Student had difficulty with word-based math problems because Student was having difficulty accessing the information from the text of the problems. Student had difficulty understanding the context of the word problems and determining the proper mathematic formula to apply in order to gain the desired result. Over the course of the school year, Student's confidence in mathematics increased and his performance improved.

75. Student's speech and language present levels of performance were reviewed. Student had made progress on his communication skills and he was able to better identify others' emotions. Student demonstrated the ability to formulate specific questions in response to texts, particularly to clarify information or encourage further discussion. Student continued to demonstrate difficulty identifying figurative language and deriving meaning of unknown words from context.

#### *GOALS*

76. The IEP offered Student six goals in the areas of reading comprehension, written expression, oral expression, mathematics reasoning, listening comprehension, and auditory processing. Five of the goals did not provide a baseline for the goals, but instead the baseline of the goals directed the reader to see testing results. However, each of the goals was directly related to Student's present levels of performance as reported in the IEP.

77. An example of the established relationship between the listed present levels of performance and the goals can be found in the Math Reasoning/Oral Expression goal. Mr. Hun, Student's math teacher, had expressed concerns about Student's difficulties with mathematical word problems. The goal indicated that within one year, when given 10 word problems Student would be able to break down each problem in simple parts and be able to verbally explain the steps with at least 85 percent accuracy in four out of five trials as measured by work sampled or teacher created tests.

78. The goals all provided methods of measuring Student's success in meeting the established goals. Each of the goals also contained short-term objectives to allow the person supporting the goal to measure Student's progress in meeting the goal.

#### *OFFER OF PLACEMENT AND SERVICES*

79. Student was placed in the Learning Strategies class during the 2013-2014 school year, but due to Fresno's discontinuation of the Learning Strategies class Student was not offered placement in that class during the 2014-2015 school year. The Learning Strategies class was a special education placement where Student received resource specialist program support. Student's June 10, 2014 IEP only offered Student 264 minutes of

specialized academic instruction per week, whereas, Student's September 26, 2013 IEP offered Student 750 minutes of specialized academic instruction per week. The substantial reduction of the specialized academic instruction was due to the discontinuation of the Learning Strategies class.

80. During the 2013-2014 school year, Student was able to get resource specialist program support with his homework in the Learning Strategies class. At times Student had difficulty completing his classwork and homework because of the amount of time that it took Student to complete it. One of Student's IEP accommodations was the allowance of extra time for completion of homework.

81. Ms. Rhodes suggested to Parents that Student take an elective class which would allow Student more time to complete his work. This general education elective class was not meant to replace Learning Strategies, but instead to allow Student time to complete his homework. The elective class allowed Student to act as a student aide in a special education class and receive course credit. Ms. Rhodes made arrangements with the special education teacher, who taught the class in which Student would act as an aide that Student would be allowed to treat the class more as a study hall.

82. Additionally, Student was offered 240 minutes monthly of speech and language services. The services were to be provided on an individual or group basis outside of the general education classroom.<sup>15</sup> To help support Student's individual transition plan, Student was offered 60 minutes yearly of vocational assessment services, counseling services, guidance, and career assessment services. Parents agreed to the IEP without exception.

#### IMPLEMENTATION OF IEP GOALS AND SERVICES

83. Student contends that his IEP goals and services were not implemented during the 2013-2014 school year. Student's argument in this area focused on his allegation that Fresno failed to implement Student's speech and language goals and services. Although, Parents rejected the September 26, 2013 offer,<sup>16</sup> Parents previously agreed to allow Fresno to implement the speech and language goals from the June 12, 2013 IEP. Ms. Cadenasso credibly testified that she provided Student 60 minutes of speech and language services weekly, during which time she worked with Student on his speech and language June 13, 2013 IEP goals. Ms. Cadenasso charted her service hours in a service log and provided those service logs to a designated person. The person to whom she was to provide the logs

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<sup>15</sup> Student did not raise the issue that the IEPs offered Student speech and language services on an individual or group basis. As such, this decision does not address that issue.

<sup>16</sup> The speech and language services offered in the June 12, 2013 IEP and the September 26, 2013 IEP were identical. However, the September 26, 2013 IEP offered Student a speech and language goal that was not a part of the June 12, 2013 IEP offer.

changed several times throughout the year. Student did not present any reliable evidence which would contradict Ms. Cadenasso's sworn testimony that she provided the requisite speech and language services to Student.

84. Parents agreed to allow Fresno to place Student in the special education class, Learning Strategies and to provide Student with resource specialist program support in that class. Ms. Rhodes credibly testified that Student was placed in the Learning Strategies class once Parents agreed at the September 26, 2013 IEP team meeting and that while in the Learning Strategies class Student received resource specialist support. Student did not present any evidence to the contrary.

85. Since Parents had not consented to the June 13, 2013 IEP or the September 26, 2013 IEP (in the areas other than those referenced above), Fresno was responsible for implementing the August 2012 IEP, as that was the operative IEP. However, due to much of the confusion regarding partially accepted IEP offers, Fresno implemented the goals from the June 13, 2014 IEP. The goals included in the August 2012 IEP and the June 2013 IEP addressed the same areas of Student's needs and were closely aligned. Even though Fresno implemented the goals from the June 2013 IEP rather than the operative IEP from August 2012, such deviation was not material as Student continued to receive an educational benefit during the 2013-2014 school year.

#### STUDENT'S ACADEMIC AND FUNCTIONAL PERFORMANCE

86. Although Student did not meet all of the goals during the school year, Student made meaningful progress on those goals. During the 2013-2014 school year Student was able to access the curriculum such that he received an educational benefit.

87. Student's grade point average for the first semester was 3.2, which was considered a "B." Student grade point average for the second semester was a 3.0, which was considered a "B." Student's lowest grade was a "C" which he received in English Language Arts during the second semester. During the school year, Student received a total of 60 credits, putting Student on track to graduate on time with the rest of his class.

88. Student struggled in English Language Arts due to his language disorder, but with the support of the resource specialist program Student was able access the curriculum and perform grade level work.

#### *2014-2015 School Year*

89. During the 2014-2015, Student was a sophomore at Roosevelt High School. Throughout the school year, Student remained on schedule to graduate with the rest of his class at the end of the 2016-2017 school year.

## PARENTS' REQUEST FOR AN IEP TEAM MEETING

90. Student's complaint, which Mother wrote and signed, indicated that in December 2014 Mother verbally requested that Ms. Rhodes schedule an IEP team meeting and that Mother followed up her request by phone and email. However, the evidence does not support Mother's contention. When Mother testified on the subject, she testified that she only made the verbal request to Ms. Rhodes when she encountered her at Student's dance recital in December 2014, but she did not testify that she had followed up her verbal request by phone and by email. Mother did not present any documentation, such as an email or telephone bill, to support the contention from Student's complaint that she had followed up by phone and email. Additionally, Ms. Rhodes testified that she remembered seeing Mother at the dance recital and that they had a brief conversation about Student's performance, but she did not remember Mother requesting that she schedule an IEP team meeting. As Mother's testimony contradicts her written statement, it is found that Mother did not make a request to have an IEP team meeting schedule.

## MAY 1, 2015, IEP TEAM MEETING

91. On May 1, 2015, Fresno scheduled Student's annual IEP team meeting. The meeting was scheduled to begin at 3:30 PM. Mother; Ms. Rhodes, case manager and special education teacher; Tracy Wayte, Student's speech and language pathologist; Maris Almanza, special education teacher; and Monty Garcia, general education teacher; were all present at 3:30 PM. Karen Streitch-Rogers, a vice principal at Roosevelt, was scheduled to attend the meeting in the role of the administrator. Unfortunately, she was delayed due to an emergency that occurred on campus. Ms. Streitch-Rogers contacted Ms. Rhodes to indicate that she would be attending the meeting, but that she had been delayed.

92. Ms. Wayte and Ms. Almanza asked for permission from Mother to be excused once they had presented their information. Ms. Wayte needed to leave due to a childcare issue and Ms. Almanza needed to leave due to a painful medical condition. Mother did not feel comfortable agreeing to excuse Ms. Wayte and Ms. Almanza, so she said that she would be in agreement to continuing the IEP team meeting to a different day. Ms. Wayte and Ms. Almanza did not want to cause a delay in Student's IEP process so they agreed to stay for the entire meeting.

93. While waiting for Ms. Streitch-Rogers to arrive, Mother was provided with a copy of the proposed goals. The IEP team began discussing Student's present levels of performance. Mother, at some point in the meeting, stated that she was uncomfortable continuing it without the presence of Ms. Streitch-Rogers. It is unclear what amount of time passed before Mother indicated that she was not comfortable continuing the meeting without the Fresno administrator. Mother informed the IEP team that she wanted to stop the meeting at that time so it could be held on another day.

94. Due to Mother's refusal to continue with the IEP team meeting, the meeting was ended. As the IEP team members were leaving, Ms. Streitch-Rogers arrived at the meeting location.

MAY 29, 2015 IEP

95. The IEP team meeting was reconvened on May 29, 2015. The meeting continued on June 5, 2015. All of the required parties were present for both meetings. Additionally, Father and Robyn Scroggins, Regional Instructional Manager, were in attendance. The IEP team meeting was recorded by both Parents and Fresno.

96. Student's present levels of performance were discussed during the IEP team meeting and listed in the IEP. Present levels of performance were identified through Student's teachers' observations, informal measures, standardized testing, and grades. The present levels of performance also included information on how Student's disability affected his performance in the general education setting.

97. The IEP offered Student seven goals in the areas of reading comprehension, written expression, oral expression, mathematics reasoning, listening comprehension, and auditory processing. Each of the goals was directly related to Student's present levels of performance as reported in the IEP and based upon Student's needs.

*OFFER OF PLACEMENT AND SERVICES*

98. The IEP offered Student 240 minutes of speech and language services per month. The services were to be provided on an individual or group basis outside of the general education classroom.

99. To help support Student's individual transition plan, Student was offered 60 minutes yearly of vocational assessment services, counseling services, guidance, and career assessment services.

100. The IEP offered Student placement in a self-contained reading intervention class and placement in a co-taught English Language Arts class for a total of 554 minutes weekly of specialized academic instruction. During the June 5, 2015 continued IEP team meeting, Ms. Scroggins provided Parents with a description of the proposed special education, reading intervention class. The class was slated to begin in the fall so Ms. Scroggins's description lacked some detail. However, the description of the class which she provided to Parents provided Parents with the necessary information for making a decision regarding the appropriateness of the proposed placement.

101. Ms. Scoggins explained to Parents that the reading class would be self-contained and taught by a special education teacher who would be utilizing Lindamood-Bell's "Seeing Stars" program<sup>17</sup> as part of the curriculum. She further explained that students were being identified for potential placement in the class by their Degrees of Reading Power test scores. Students with test scores placing them between the first and third grade were being targeted for placement. During the discussion, other team members added that the instruction was going to be differentiated in the class. Mother disagreed with the offered reading intervention class because she believed Student's Degrees of Reading Power test score placed him at a fourth grade reading level.

#### IMPLEMENTATION OF IEP GOALS AND SERVICES

102. The June 10, 2014 IEP's goals and services were implemented during the 2014-2015 school year. Student received the speech and language services which were included in the June 10, 2014 IEP. During the school year, Student's speech and language service provider was changed to Tracy Wayte, a certified speech and language pathologist. Ms. Wayte continued to implement the speech and language goals and services indicated in Student's IEP. Student provided no evidence that Fresno failed to implement any portion of his IEP during the 2014-2015 school year.

#### STUDENT'S ACADEMIC AND FUNCTIONAL PERFORMANCE

103. Despite the elimination of the Learning Strategies class from Student's placement, Student continued to maintain a 2.5 grade point average during the 2014-2015 school year and continued to be able to receive an educational benefit. The lowest grade that Student received during that school year was a "C-" in biology during the first semester. However, by the second semester Student raised his biology grade to a "B-."

104. The assistance of his teachers during lunch time and after school to address his questions about his classwork and homework, a general education intervention, allowed Student to progress in his education and receive an educational benefit. Despite the fact that Student struggled with the English Language Arts curriculum due to his deficit with reading comprehension, Student's received an "A" in English Language Arts during the first semester and a "C" during the second semester.

105. The slight decline in Student's overall grade point average was attributable in part due to the increasing difficulty level of the course work required as Student advanced in grades. During the 2014-2015 school year, the curriculum in Student's English Language Arts class revolved around Common Core literature which involved deeper analysis by students. In the second semester of the school year, Student's English Language Arts studied some literature which caused Student particular difficulty. For example, during the second

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<sup>17</sup> Lindamood-Bell is a private organization that provides applies a specific teaching methodology to provide students with individualized academic assistance. Lindamood-Bell's "Seeing Stars" program focuses on reading to students who have deficits in that area.

semester the class studied the novel To Kill a Mockingbird. Student experienced a great deal of difficulty understanding the novel, because it was filled with symbolism, metaphors, and similes. Analysis of literature was an area in which Student had particular difficulty due to his language disorder and specific learning disorder. Yet despite Student's disability, with the assistance of the resource specialist program teacher, Student was able to access the curriculum and receive some educational benefit.

106. Part of Student's speech and language therapy focused on helping Student to understand symbolism, metaphors, and similes. Ms. Wayte utilized the assigned literature from Student's English Language Arts class to work with Student on those areas of difficulty.

### *Social Skills*

107. Student contends that throughout the time period at issue Fresno should have offered Student goals regarding developing his social skills and social skills training, due to his diminished interest in interacting with his peers. The issue of whether Student should have been provided social skills training will not be addressed in this decision, as Student did not raise it as an issue in his complaint. The testimony and evidence indicated that Student's needs in this area remained consistent throughout the time period at issue. As such, Student's needs in this area during the 2013-2014 and 2014-2015 school year shall be analyzed as a whole.

108. Student did not have any behavioral problems or issues while at school. Student's teachers considered Student to be polite and courteous and they enjoyed having Student in their classes. Student did not interact socially with his peers in the same manner as most of his peers. Student's teachers indicated that while he was in class he did not socialize very much with the other students. Student would ask his classmates for basic assistance, but he preferred to ask for assistance from adults.

109. Student did interact with his peers before class and at some extent. Despite lack of desire to interact with his peers during class, Student actively participated in group or partner based work. Additionally, in Student's Folkloric dance class he interacted and performed effectively with his dance partners.

110. Mother was concerned about Student's social skills because she felt that Student did not have friends at school and that he did not spend his free time socializing with his peers. Mother testified that, when given the opportunity, Student preferred not to interact with his peers. She testified that Student preferred the companionship of his dog to companionship of people. Mother provided the example of the time that she and Father offered to have a birthday party for Student and Student declined the offer. Upon probing by Parents, Student indicated that he did not have anyone he wanted to invite. Student did not seem upset by his lack of peer based relationships. Parents decided to hold a birthday dinner and have Student's cousins who were approximately Student's age attend. Student again rejected the offer and indicated that he would prefer not to have a birthday party.



111. Student's diminished desire to interact with his peers did not impact his ability to access his education. Student was able to fully participate in group and partner work while in class. The concept behind special education is to embrace the unique nature of each child and to find a way to help each child to receive a benefit from his or her education. No evidence was presented to show that Student was unhappy about his lack of connection with his peers or that it was having a negative impact on Student's education.

#### *Extended School Year Services*

112. The June 12, 2013 IEP, the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP did not offer Student extended school year services. Student did not provide any evidence that the interruption of his services during school breaks was likely to cause Student to demonstrate significant regression in skills and that the educational benefit he derived during the regular school year would not be significantly jeopardized if he did not receive extended school year programming.

#### *Progress Reports*

113. The August 30, 2012 IEP, which was the last agreed upon and implemented IEP, indicated that reports regarding Student's progress on his goals were to be provided to Parents on a quarterly basis. During the 2013-2014 and 2014-2015 school years, Heather Rhodes sent home progress reports regarding Student's IEP goals on a quarterly basis, but all of the progress reports for the 2013-2014 school year provided information about Student's progress on the goals from the June 13, 2013 IEP, which was not the operative IEP, except for the speech and language goals and services.

114. Student contends that Parents did not receive progress reports during the 2013-2014 and 2014-2015 school years. However, Ms. Rhodes credibly testified that she sent home Student's progress reports on a quarterly basis during both of those school years. Ms. Rhodes testimony on the subject was supported by the testimony of Student's general education math teacher and general education English teacher who testified that they conferred with Ms. Rhodes regarding Student's progress. Additionally, Ms. Cadenasso testified that she entered the progress report notes into Fresno's computer system on a quarterly basis and Ms. Rhodes was responsible for providing the progress reports to Parents.

115. Student's contention that Parents did not receive progress reports during the 2013-2014 and 2014-2015 school years is not credible. Mother was well aware of Fresno's duty to provide progress reports to Parents on quarterly basis, as evidenced by her past behavior. At an IEP team meeting in 2013, Mother pointed out Fresno's failure to provide Parents with progress reports during the 2012-2013 school year. At that time Fresno acknowledged its failure to provide the reports to Parents. Despite Mother's knowledge of Fresno's duty, Mother made no mention of Fresno's failure to provide progress reports at the June 10, 2014 IEP team meeting, the May 1, 2015 IEP team meeting, the May 8, 2013 IEP team meeting, the May 29, 2015 IEP team meeting, or the June 5, 2015 IEP team meeting.

116. Fresno provided Parents with quarterly report cards that provided Student's progress on all subjects. Additionally, Student's progress was discussed at the IEP team meetings, so even if the separate reports were not sent home as Student contends, the pertinent information was provided periodically to Parents. Therefore, Student has not demonstrated that he suffered a lack of educational benefit or that his Parents' ability to meaningfully participate in his IEP process was impeded.

## LEGAL CONCLUSIONS

### *Introduction: Legal Framework under the IDEA*<sup>18</sup>

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)<sup>19</sup> et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

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<sup>18</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>19</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that “the ‘basic floor of opportunity’ provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.].) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 951, fn. 10.)

4. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C), (D); Ed. Code, § 56505, subd. (l).) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].)

#### *Issue 1: Did Fresno Commit Procedural Violations of the IDEA?*

5. In *Rowley*, the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Id.* at 205-206.) However, a procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of FAPE only if it impedes the child’s right to a FAPE, significantly impedes the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents’ child, or causes a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2).); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484. (*Target Range*))

6. Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9<sup>th</sup> Cir. 2013) 720 F.3d 1038, 1043-1044.) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a).) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6<sup>th</sup> Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3<sup>d</sup> Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].)

#### A. ACCURATE LEVELS OF ACADEMIC AND FUNCTIONAL PERFORMANCE

7. Student generally contends that Fresno failed to adequately identify his present levels of academic and functional performance in the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP, but he did not provide evidence in support of the contention. Mother spent some time during her testimony focusing on Student's social skills. She felt the present level of performance provided in the area of social-emotional and behavioral in the IEPs at issue should reflect Student lack of engagement with his peers. Mother also asserted that the present levels of performance in the IEP's indicated that Student "passed" his vision test was inaccurate. Fresno contends that the present levels provided in each of the three aforementioned IEP's were accurate reflections of Student's academic and functional performance.

8. An IEP is evaluated in light of information available to the IEP team at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9<sup>th</sup> Cir. 1999) 195 F.3d 1141, 1149.) "An IEP is a snapshot, not a retrospective." (*Id.* at p. 1149, citing *Fuhrmann v. East Hanover Bd. of Ed.* (3<sup>rd</sup> Cir. 1993) 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*)

9. Federal and state law specify that an annual IEP must contain a statement of the student's present levels of academic achievement and functional performance, including the manner in which the student's disability affects his involvement and progress in the regular education curriculum. (20 U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320 (a)(1); Ed. Code, § 56345, subd. (a)(1).)

10. Student's contentions were not supported by the weight of the evidence. The evidence showed that the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP contained accurate levels of Student's academic and functional performance at the time the IEP's were developed. The IEP's present levels of performance consisted of assessment results, observational data, and information regarding the effect of Student's

disability on his progress in the general education curriculum. Therefore, Fresno did not commit a procedural violation by failing to provide accurate levels of Student's academic and functional performance.

#### B. APPROPRIATE AND MEASURABLE GOALS

11. Student argues that the goals included in the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP should not have been tied to the Common Core State Standards. Additionally, Student contends that the goals should have been written to Student's instructional reading level. Student also contends that goals should have been developed to address Student's social skills deficit. Fresno contends that the goals included in the above mentioned IEP's were appropriate and measurable. Fresno further contends that there is no requirement to develop goals based on a student's instructional reading level.

12. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional, and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).) For each area in which a special education student has an identified need, the IEP team must develop measurable annual goals that are based upon the child's present levels of academic achievement, and functional performance, and that the child has a reasonable chance of attaining within a year. (Ed. Code, § 56345.)

13. An IEP must contain a statement of measurable annual goals related to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum" and "meeting each of the child's other educational needs that result from the child's disability." (20 U.S.C. § 1414(d)(1)(A)(ii); Ed. Code, § 56345, subd. (a)(2).) The IEP must also contain a statement of how the child's goals will be measured. (20 U.S.C. § 1414(d)(1)(A)(viii); Ed. Code, § 56345, subd. (a)(3).) The IEP must show a direct relationship between the present levels of performance, the goals, and the educational services to be provided. (Cal. Code Regs., tit. 5, § 3040, subd. (b).)

14. In a November 16, 2015 joint letter, the Office of Special Education and Rehabilitative Services and the Office of Special Education Programs state that IEP goals must align with state academic content standards for the grade in which the special education student is enrolled. The agencies explained that aligning IEP goals with grade-level content standards reflects the IDEA's emphasis on having high expectations for students with disabilities.<sup>20</sup> (*Dear Colleague Letter*, \_\_ IDELR \_\_ (OSERS 2015).)

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<sup>20</sup> These offices are a division of the United States Department of Education and are charged with administering the IDEA and developing its regulations.

15. Fresno is correct in that there is no mandate supporting the claim that goals be written to a student's instructional reading level. Additionally, aligning Student's IEP goals to the Common Core Standards is supported by the position addressed in the Office of Special Education and Rehabilitative Services and the Office of Special Education Programs' November 16, 2015 *Dear Colleague Letter*. The alignment of Student's IEP goals with the grade level Common Core Standards directly reflects the IDEA's emphasis on maintaining high expectations for students with disabilities. This concept is further supported by the fact that IEP goals must be designed to enable students' involvement in and progress in the general curriculum. In this case, the goals which were included in the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP addressed Student's needs that resulted from his disability and enabled Student to progress in the general education curriculum.

16. The IEP must also contain a statement of how the student's goals will be measured. Each of the goals contained in the September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP contained a statement of how Student's goals would be measured. The goals developed at the September 26, 2013, the June 10, 2014, and the May 29, 2015 IEP team meetings were appropriate and measurable.

#### C. FAILURE TO PROVIDE A DESCRIPTION OF OFFERED READING INTERVENTION CLASS

17. Student contends that Parents were denied meaningful participation in the May 29, 2015 IEP process by Fresno failing to provide Parents with a course description for the offered special education, reading intervention class. Fresno asserts that Parents were provided with a description of the reading intervention class.

18. A parent has meaningfully participated in developing an IEP when he is informed of his child's problems, attends the IEP team meeting, expresses his disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

19. During the June 5, 2015, IEP team meeting which was a continuation of the May 29, 2015 IEP process, Ms. Scoggins provided Parents with a description of the proposed special education, reading intervention class. The class was slated to begin in the fall so Ms. Scroggins's description lacked some detail. However, the description of the class which she provided to Parents was sufficient to allow Parents to have the information necessary information to make a decision regarding the appropriateness of the proposed placement. Therefore, Parents were not denied meaningful participation in the May 29, 2015 IEP process on the basis that Fresno failed to provide Parents with a course description of the proposed special education, reading intervention class.

#### D. FAILURE TO PROVIDE PARENTS PROGRESS REPORTS

20. Student contends that Fresno did not provide Parents with any progress reports concerning his goals during the 2013-2014 and 2014-2015 school year. As a result, they claim they were significantly impeded from meaningful participation in the IEP process. Fresno contends that Parents were provided with quarterly progress reports concerning Student's goals during the 2013-2014 and 2014-2015 school year.

21. An IEP must state when periodic reports on the progress the child is making toward meeting his annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. (20 U.S.C. § 1414(d)(1)(A)(III); 34 C.F.R. § 300.320(a)(3)(ii); Ed. Code, § 56345, subd. (a)(3).)

22. The September 26, 2013 IEP, the June 10, 2014 IEP, and the May 29, 2015 IEP stated that Fresno was to provide Parents with reports of Student progress towards meeting his annual goals on a quarterly basis. The evidence shows that Fresno complied with the IEP's timelines and provided Parents quarterly progress reports throughout the 2013-2014 and 2014-2015 school years. Thus, Student did not meet his burden of showing that Fresno committed a procedural violation by failing to provide Parents with reports regarding Student's progress in meeting his goals during the 2013-2014 and 2014-2015 school years.

#### E AND F. FAILURE TO HOLD AN IEP TEAM MEETING AND PROVIDE PRIOR WRITTEN NOTICE

23. Student contends that Fresno failed to hold an IEP team meeting between January 2015 and May 2015, after Mother requested that an IEP team meeting be held. Furthermore, Student contends that Fresno failed to provide Prior Written Notice when it decided not to honor Mother's request to hold an IEP team meeting. Fresno contends that Mother did not request that an IEP team meeting be held and so it was under no duty to hold an IEP team meeting or to provide Prior Written Notice.

24. A parent has meaningfully participated in developing an IEP when he is informed of his child's problems, attends the IEP team meeting, expresses his disagreement regarding the IEP team's conclusion, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1036.)

25. Prior written notice must be given by the public agency to the parents of an individual with exceptional needs "upon initial referral for assessment, and a reasonable time before the public agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child." (Ed. Code, § 56500.4, subd. (a); see also, 20 U.S.C. 1415(b)(3) and (4) and (c)(1); 34 C.F.R. 300.503.)

26. The evidence supports the finding that in December 2014 Mother did not request that an IEP team meeting be held. Mother's testimony that in December 2014, at a dance recital, she requested that Ms. Rhodes set up an IEP team meeting was not credible. Since Parents did not request an IEP team meeting, there was no requirement for Prior Written Notice regarding such.

#### G. REQUIRED MEMBERS OF IEP TEAM AT MAY 1, 2015 IEP TEAM MEETING

27. Student contends that Parents were denied meaningful participation in the May 1, 2015 IEP team meeting because the school vice principal, who was serving as the administrator at the IEP team meeting, was not present. Fresno contends that the scheduled May 1, 2015 IEP team meeting was never actually convened because only an informal discussion of Student's progress occurred prior to Mother indicating that she wanted to continue the IEP team meeting.

28. An IEP team is required to include: one or both of the student's parents or their representative; a regular education teacher if a student is, or may be, participating in regular education; a special education teacher; a representative of the school district who is qualified to provide or supervise specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about available resources; a person who can interpret the instructional implications of assessments results; at the discretion of the parties, other individuals; and, when appropriate, the person with exceptional needs. (20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. § 300.321(a); Ed. Code, §§ 56341, subd. (b).)

29. The evidence supports the finding that the May 1, 2015 IEP team meeting was convened once the IEP team members, who were present, began to discuss Student's present levels of performance. The absence of Roosevelt's vice principal, Ms. Streitch-Rogers, from the IEP team meeting constituted a procedural violation as no other representative of the school district who was qualified to provide or supervise specially designed instruction, knowledgeable about the general education curriculum, and knowledgeable about the available resources was present at the meeting.

30. However, the procedural violation did not result in a denial of FAPE. Mother stopped the IEP team meeting due to the fact that not all of the required members were present. Fresno agreed to end the meeting at her request. Fresno then reconvened the IEP team meeting on two subsequent occasions and Student's present levels of performance were discussed. A procedural violation only occurs if it impedes the child's right to a FAPE, significantly impedes the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child, or causes a deprivation of educational benefits. Because Fresno discontinued the meeting when Mother did not want to proceed without an administrator present, and reconvened the meeting to discuss the all remaining IEP issues, no violation occurred. Even if a procedural violation did occur, Student has failed to demonstrate that the failure to have a district administrator present at the discontinued meeting deprived him of any educational benefit, impeded his right to a FAPE, or impeded his Parents' ability to participate in his IEP process.



## *Issue 2: Did Fresno Fail to Provide Student Appropriate Academic Instruction?*

### A. FAILURE TO PROVIDE ADDITIONAL HOUR OF INSTRUCTION

31. Student contends that Fresno denied him a FAPE by failing to provide him with an additional hour daily of one-to-one instruction and specialized academic services. Fresno rejects Student's contention and argues that Student failed to provide any evidence that an additional hour of one-to-one instruction and/or specialized academic services was needed for Student to receive an educational benefit.

32. The IDEA neither requires that a school district provide the best education to a child with a disability, nor that it provide an education that maximizes the child's potential. (*Rowley, supra*, 458 U.S. at 197, 200; *Gregory K. v. Longview School Dist.* (9th Cir.1987) 811 F.2d 1307, 1314.) As long as the school district's offer was reasonably calculated to provide educational benefit, it constitutes an offer of a FAPE. (*Rowley, supra*, 458 U.S. at 200.) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K., supra*, 811 F.2d at 1314.)

33. Student asserts that because he did not meet all of his goals during the time period at issue and the three years predating it that he required an additional hour of one-to-one instruction and specialized instruction was needed. However, Student failed to provide any convincing evidence that an additional hour of one-to-one instruction and specialized academic instruction had been needed for Student to receive an educational benefit. Although Mother testified that she believed Student needed the additional hour of instruction, her argument was circular in that it never explained the basis for her opinion, but instead merely repeated that Student did not meet his goals so he needed the additional instruction.

34. On the contrary, the evidence establishes that, in light of Student's disability, he received educational benefit. Student was maintaining a "B" average in school and was on track to graduate with his peers. Student continued to maintain a "B" average despite his disability. Under the IDEA, "meaningful educational benefit" must be gauged in relation to the potential of the child at issue. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 861-62.) In light of the forgoing, it is determined that Fresno did not deny Student a FAPE for the 2013-2014 and 2014-2015 school years by failing to provide Student an additional hour of one-to-one instruction and academic instruction.

### B. FAILURE TO PROVIDE INTERVENTIONS AND SERVICES AT INSTRUCTIONAL READING LEVEL

35. Student contends that Fresno's failure to provide him with interventions and services at Student's instructional reading level denied Student a FAPE. Fresno contends that there is no such requirement to provide interventions and services at Student's instructional reading level.

36. Mother was very focused on Student's instructional reading level during the hearing. Mother testified that she believed that Student should have been provided interventions and services at Student's instructional reading level. Despite Mother's focus on the issue, she failed to provide any evidence to support her opinion. Mother also believed that Student should be provided one-to-one reading intervention services from Lindamood-Bell. However, Ms. Bowen, the Lindamood-Bell representative and Student's own witness, did not indicate during her testimony that the services would be provided at Student's instructional reading level. Thus, Student failed to meet his burden of proving that Fresno denied Student a FAPE because it failed to provide Student with interventions and services at his instructional reading level from June 30, 2013 through June 30, 2015.

### *Issue 3: Failure to Provide Appropriate Speech and Language Services*

#### A. FAILURE TO PROVIDE SERVICES

37. Student contends that Fresno failed to provide Student any speech and language services between the dates of June 30, 2013, and December 31, 2013. However, Student's IEP did not offer Student extended school year services for 2013, so Fresno would not have been responsible for providing Student speech and language services until the beginning of the 2013-2014 school year. Fresno contends that the June 2013 IEP was implemented during that time and Student was provided all of the requisite services without interruption.

38. Ms. Cadenasso credibly testified that she provided Student with the required speech and language services from the beginning of the 2013-2014 through the end of the 2013-2014 school year. Mother admitted during her testimony that she had no reason to doubt Ms. Cadenasso's testimony. Therefore, Student did not meet his burden of proving that Fresno failed to provide him with any speech and language services between June 30, 2013, and December 31, 2013.

#### B. FAILURE TO INCREASE STUDENT'S SERVICES

39. Student contends that Fresno should have increased Student's speech and language services during the time period beginning June 30, 2013, and ending June 30, 2015. Fresno contends that the level of speech and language services it was providing Student allowed him to receive some educational benefit.

40. Although Ms. Wyate testified that Student struggled with his speech and language goals while she provided him speech and language services, she also testified that Student made some progress on his speech and language goals. Both Ms. Cadenasso and Ms. Wyate testified that Student's services should not have been increased. Student did not present any evidence that contradicted the two speech and language pathologists' opinions. Thus, Student failed to meet his burden of proving that Fresno failed to provide him with appropriate speech and language services by failing to increase Student's speech and language services during the period beginning June 30, 2013 and ending June 30, 2015.

#### *Issue 4: Substantive Denial of FAPE*

##### **A. REMOVAL OF STUDENT’S LEARNING STRATEGIES CLASS**

41. Student argues that Fresno denied him a FAPE by discontinuing Student’s placement in Learning Strategies and allowing Student to act as an aide for a special education class. Fresno argues that the failure to offer Student placement in the Learning Strategies class did not constitute a denial of FAPE.

42. Student was placed in the Learning Strategies class during the 2013-2014 school year, but due to Fresno’s discontinuation of the Learning Strategies class Student was not offered placement in that class during the 2014-2014 school year. The Learning Strategies class was a special education placement where Student received resource specialist program support. Student’s June 10, 2014 IEP only offered Student 264 minutes of specialized academic instruction, whereas, Student’s September 26, 2014 IEP offered Student 750 minutes of specialized academic instruction.

43. Despite the elimination of the Learning Strategies class from Student’s placement, Student maintained a 2.5 grade point average during the 2014-2015 school year. The lowest grade that Student received was a “C-” in biology during the first semester of the school year. By the second semester Student had raised his grade to a “B-.” Student received an “A” during the first semester and a “C” during the second semester in English Language Arts, the class in which Student struggled the most.

44. The slight decline in Student’s grade was also due to the increasing difficulty level of the course work required as Student advanced in grades. During the 2014-2015 school year, the curriculum in Student’s English Language Arts class revolved around Common Core literature which involved deeper analysis by students. Analysis of literature was an area in which Student had particular difficulty due to his language disorder and specific learning disorder. Yet despite Student’s disability, with the assistance of the resource specialist program teacher, Student was able to access the curriculum and receive some educational benefit.

45. Additionally, Fresno provided Student with the general education interventions of the assistance of his teachers during lunch time and after school. Student regularly accessed his teachers’ help regarding the homework assignments. Roosevelt also offered an after-school tutoring program to all of its students. However, Student did not access that program because Mother was concerned about the level of quality of the after-school tutoring program.

46. As long as a school district is able to meet the needs of a student with its current educational programming, it is under no obligation to create an educational programming for one student. The extra help that the Learning Strategies class provided Student during the 2013-2014 school year was successfully replaced by general education interventions during the 2014-2015 school year. Therefore, Fresno continued to meet Student’s need for

assistance, albeit in a different manner. Under the *Rowley* standard, Student continued to receive some educational benefit, even after the Learning Strategies class was no longer available to Student. Accordingly, Fresno did not deny Student a FAPE by removing Student's Learning Strategies class and offering Student placement as an aide in a special education class.

## B. EXTENDED SCHOOL YEAR SERVICES

47. Student contends that Fresno denied him a FAPE by failing to offer and provide him with extended school year services during the 2013, 2014, and 2015 extended school years. Fresno argues that Student's needs did not warrant providing Student with extended school year services. Fresno's argument is found to be persuasive and supported by the evidence.

48. Extended school year services shall be provided for each pupil with unique and exceptional needs who requires special education and related services in excess of the regular academic year. (Cal. Code Regs., tit. 5, § 3043; see also 34 C.F.R. § 300.106; Ed. Code, § 56345, subd. (b)(3); *N.B. v. Hellgate Elementary School Dist.* (9th Cir. 2007) 541 F.3d 1202, 1209-1210.) Pupils to whom extended summer school services must be offered under section 3043:

. . . . shall have handicaps which are likely to continue indefinitely or for a prolonged period, and that would otherwise be expected in view of his or her handicapping condition interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence.

49. Student did not present any evidence that the interruption of his services during the summer recess would cause his academic and functional skills to regress to such an extent that it would be impossible or unlikely that he would be able to attain self-sufficiency and independence in the future, or that he would be unable to recoup any regression experienced during the summer break. Student's needs did not require that Fresno provide him extended school year services. Therefore, Fresno did not deny Student a FAPE by failing to offer or provide Student extended school year services from June 30, 2013 through June 30, 2015.

### *Issue 5: Failure to Implement the Goals and Services of Student's IEPs*

50. Student argues that Fresno denied him a FAPE by failing to implement his IEP's goals and services during the time period beginning June 30, 2013, and ending June 30, 2015. During the due process hearing, Student focused on his allegation that Fresno failed to provide Student with speech and language services during the time period at issue.

51. When a student alleges a denial of FAPE based on the failure to implement an IEP, in order to prevail on the issue the student must prove that any failure to implement the IEP was “material,” meaning that “the services a school provides to a disabled child fall significantly short of the services required by the child's IEP.” (*Van Duyn v. Baker School Dist. 5J* (9th Cir. 2007) 481 F.3d 770, 780.) “Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation.” (*Ibid.*)

52. Student’s contention that he was not provided the speech and language services that were designated in the operative IEP during the time period beginning June 30, 2013, and ending June 30, 2015 is not supported by the evidence. The credible testimony of Fresno’s speech and language therapists supports the conclusion that Student was provided all of the requisite speech and language services during the time period beginning June 30, 2013, and ending June 30, 2015. Furthermore, the evidence supports the finding that the speech and language therapists utilized the speech and language services time to work with Student on his speech and language goals. Therefore, Student failed to prove that Fresno failed to implement Student’s IEP by not providing Student speech and language services and by not implementing his speech and language goals.

53. Fresno failed to implement the goals from the August 26, 2012 IEP, which was the operative IEP for non-speech and language goals. Instead Fresno implemented the goals from the June 12, 2013 IEP. However, in failing to implement the goals from the operative IEP, Fresno did not deny Student a FAPE because the failure to implement was not material as the implemented goals addressed Student’s needs and were substantially aligned with the goals contained in the operative IEP.

54. Furthermore, Student failed to present any evidence proving that Fresno failed to implement the goals and services from the June 2014 IEP, which was the operative IEP during the 2014-2015 school year. For this reason and the aforementioned reasons, Fresno did not deny Student a FAPE by failing to implement Student’s IEP’s goals and services during the time period beginning June 30, 2013, and ending June 30, 2015.

## ORDER

1. All relief sought by Student is denied.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Fresno was the prevailing party on all issues presented.

## RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: November 18, 2015

/s/

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B. ANDREA MILES  
Administrative Law Judge  
Office of Administrative Hearings